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Interim Co-Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

15 MARC OPPERMAN, et al.,
 16
 17 Plaintiffs

v.

18 PATH, INC., et al.,
 19
 20 Defendants.

Case No. 13-cv-00453-JST

CLASS ACTION

OPPERMAN PLAINTIFFS' OPPOSITION TO THE MOTION TO INTERVENE BY JUSTIN MICHAEL CREDICO

Hernandez v. Path, Inc., No. 12-cv-1515-JST
Pirozzi v. Apple, Inc., No. 12-cv-1529-JST
 (collectively, the "Related Actions")

1 On November 25, 2014, Justin Michael Credico filed a pro se motion to intervene in this
2 case. ECF No. 524 (“Motion”). Mr. Credico asserts that he should be allowed to intervene
3 because he is a member of the putative class, “because of the security knowledge he has of
4 idevices; from being a hacker, malware coder, and programmer,” and because he “claims, as do
5 these plaintiffs, that Apple misled the public about the integrity of its iphone ... [and
6 misrepresented] that apps could not access data from other apps.” Motion at pp. 4, 16. Plaintiffs
7 respectfully oppose Mr. Credico’s motion because this lawsuit is already seeking recovery for all
8 putative class members for the matters raised by Mr. Credico, and because counsel do not
9 believe Mr. Credico’s personal participation as an additional party will materially advance the
10 goals of the class.

11 First, despite Mr. Credico’s expressed iOS programming proficiency and knowledge of
12 address-book related iDevice security flaws, Motion at p. 14, the only role Mr. Credico could
13 play as an intervening litigant in this action would be as an individual class member or
14 representative. Pro se lay persons cannot act as class counsel or otherwise represent the interests
15 of a class and Mr. Credico’s present detention status, *see* Motion at p. 19, likely disqualifies him
16 from serving as a class representative in this District. White v. Sacramento Cnty. Main Jail Med.
17 Dep’t, No. 2:14-CV-1572 AC P, 2014 WL 5602793, at *3 (E.D. Cal. Nov. 3, 2014) (citing cases)
18 (“It is well established that a layperson cannot ordinarily represent the interests of a class. ... This
19 rule becomes almost absolute when, as here, the putative class representative is incarcerated and
20 proceeding pro se.”). The Motion offers no explanation of why or how it would be productive to
21 the litigation of the case to attach his individual claim, which mimics existing claims against
22 Apple, to the class claims already being pursued by the Plaintiffs here. While the Motion
23 suggests that Mr. Credico has certain knowledge about the way Apple’s iDevices function and
24 are programmed, that sort of knowledge and information is readily available through discovery
25 and from expert and lay witnesses, who presumably have fewer travel and communications
26 constraints.

27 Second, to intervene as of right, the Ninth Circuit Court of Appeals requires an intervenor
28 to show that “(1) [he] has a ‘significant protectable interest’ relating to the property or

1 transaction that is the subject of the action; (2) the disposition of the action may, as a practical
2 matter, impair or impede [his] ... ability to protect its interest; (3) the application is timely; and
3 (4) the existing parties may not adequately represent [his] ... interest.” Perry v.
4 Schwarzenegger, 630 F.3d 898, 903 (9th Cir. 2011). The Motion makes no such showing.
5 Moreover, any eventual disposition of the action will not impair or impede any claims Mr.
6 Credico has against Apple because (a) the individual claims mentioned in the Motion are already
7 being vigorously pursued on a class-wide basis for all affected iDevice consumers via the present
8 lawsuit; and (b) if a class is certified, Mr. Credico will have the right to either remain in the class
9 or opt-out individually to pursue his claims at that time. Finally, experienced counsel and the
10 putative class representatives already involved in this action adequately represent the consumer
11 interests described in the Motion and the Motion does not suggest otherwise. Accordingly, the
12 Court should deny Mr. Credico’s motion for intervention as of right. Id. (“An applicant’s
13 ‘[f]ailure to satisfy any one of the requirements is fatal to the application, and we need not reach
14 the remaining elements if one of the elements is not satisfied.”)

15 As for permissive intervention, the Court must consider, among other things, “whether
16 the intervenor’s interests are adequately represented by other parties” and “whether parties
17 seeking intervention will significantly contribute to full development of the underlying factual
18 issues in the suit and to the just and equitable adjudication of the legal questions presented.” Id.
19 at 905. Here too the Motion does not make either showing. Regardless, the interests described
20 in the Motion are already well represented by the present Plaintiffs. Moreover, irrespective of
21 Mr. Credico’s professed expertise with the subject matter, his presence as a pro se party litigant,
22 as well as his current incarceration in Pennsylvania, would likely impede rather than assist in
23 development of the underlying factual issues and significantly delay a conclusion of this case to
24 everyone’s detriment.

25 Ultimately, Mr. Credico’s Motion provides no cogent explanation for how his individual
26 participation in this action from the confines of a Pennsylvania federal correctional facility is
27 essential to protecting his interests. Nor does the Motion indicate that Mr. Credico is
28

1 inadequately represented by class counsel, or how his personal participation will substantially
2 benefit anyone else. The Court should deny Mr. Credico's motion to intervene.

3 Dated: December 4, 2014

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Plaintiffs' Steering Committee ("PSC")

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on December 4, 2014, I electronically submitted the foregoing
3 OPPERMAN PLAINTIFFS' OPPOSITION TO THE MOTION TO INTERVENE BY JUSTIN
4 MICHAEL CREDICO using the electronic case files system of the court. The electronic case
5 files system sent a "Notice of Electronic Filing" to individuals who have consented in writing to
6 accept this Notice as service of this document by electronic means.

7 On, December 4, 2014 I served the foregoing OPPERMAN PLAINTIFFS'
8 OPPERMAN PLAINTIFFS' OPPOSITION TO THE MOTION TO INTERVENE BY JUSTIN MICHAEL CREDICO on the
9 parties listed below as follows:

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11

Justin Credico, #71239-066 FDC Philadelphia Federal Detention Center P.O. Box 562 Philadelphia, PA 19105
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14 **By first class mail** by placing a true copy thereof in a sealed envelope with
15 postage thereon fully prepaid and placing the envelope in the firm's daily mail processing center
16 for mailing in the United States mail at San Francisco, California.

17 /s/Michael von Loewenfeldt